

MINUTES OF THE REGULAR CITY COUNCIL MEETING
CITY OF BEE CAVE
APRIL 26, 2011

STATE OF TEXAS §

COUNTY OF TRAVIS §

Present:

Caroline Murphy, Mayor
Jack McCool, Mayor Pro Tem
Bob Dorsett, Jr., Council Member
Bill Goodwin, Council Member
Mike Murphy, Council Member

Absent:

Chad Bockius, Council Member

City Staff:

Frank Salvato, City Administrator
Travis Askey, Deputy City Administrator
Patty Akers, City Attorney
Kaylynn Holloway, City Secretary
Giancarlo Patino, Engineer Associate
Russell Pancoast, Police Chief
Stephen Myrick, Building Official

Call to Order and Announce a Quorum is Present

With a quorum present, the Regular Meeting of the Bee Cave City Council was called to order by Mayor Murphy at 6:09 p.m. on Tuesday, April 26, 2011 in the Council Chambers of the City of Bee Cave City Hall, 4000 Galleria Parkway, Bee Cave, Texas.

Pledge of Allegiance

The City Council recessed the meeting at 6:10 p.m. and reconvened at 6:32 p.m.

Citizen Comments

Jennie Braasch, 14416 Piper Glen, stated she and her company had no involvement in the selling or purchasing of the Trading Post.

Consent Agenda.

- A. Consider approval of minutes of the Regular meeting conducted on April 12, 2011.
- B. Discuss and consider action on the monthly financial and investment report.
- C. Proclamation recognizing May 2011 as Older Americans Month in the City of Bee Cave.

MOTION: A motion was made by Council Member Goodwin, seconded by Council Member Dorsett, to approve the consent agenda.

The vote was taken on the motion with the following result:

Voting Aye: Mayor Pro Tem McCool, Council Members Dorsett, Goodwin and
Murphy
Voting Nay: None
Absent: Council Member Bockius

The motion carried 4-0.

Public hearing, discussion and possible action on Ordinance No. 82, an ordinance amending Chapter 32 (Zoning), Section 32.02.004 "Changes and amendments to zoning ordinances and districts, and administrative procedures" to provide for public hearing and notice requirements that conform to state law for text amendments to the zoning ordinances and for amendments to zoning districts and boundaries.

Mayor Murphy opened the public hearing at 6:37 p.m.

Bob Jeffries, 15500 Spillman Ranch Loop, stated that it was important for the Council to be proactive and to adopt the ordinances that are currently on the agenda.

The public hearing closed at 6:40 p.m.

Terri Wood, Chair of the Planning and Zoning Commission, reported that the Commission unanimously recommended adoption of Ordinance No. 82

MOTION: A motion was made by Council Member Dorsett, seconded by Mayor Pro Tem McCool, to approve Ordinance No. 82.

The vote was taken on the motion with the following result:

Voting Aye: Mayor Pro Tem McCool, Council Members Dorsett, Goodwin and
Murphy
Voting Nay: None

Absent: Council Member Bockius

The motion carried 4-0.

Public hearing, discussion and possible action on the following:

Ordinance No. 83, an ordinance amending Chapter 32 (Zoning), Section 32.04.001 "Use Regulations" to provide for a new use of "Adult Novelty Stores" and amending Section 32.05.014 "Definitions" to define "Adult Novelty Stores and other Similar Businesses".

Ordinance No. 84, an ordinance amending Chapter 32 (Zoning), Section 32.03.012 "C-Commercial District" to include adult novelty stores as a possible conditional or permitted use, include a screening requirement, and adjust setback requirements.

Ordinance No. 85, an ordinance amending Chapter 32 (Zoning), Section 32.04.004 "Sexually Oriented Business" to provide for additional definition of "Major Business" and "Primary Business Purpose".

Mayor Murphy opened the public hearing at 6:46 p.m.

Maury Giles, 13608 Overland Pass, stated that he opposes the location in Bee Cave for Planet K. He stated that he agreed with the requirement of applying for a Conditional Use Permit.

Kim Stebbing, 12317 Pleasant Hill Court, stated that Planet K showed total disregard for the City's rules and regulations. She opposed the company locating in Bee Cave.

Zelda Auslander, 3101 Hayden Bend, opposed the opening of an Adult Novelty Head Shop in Town Center.

Liz Stringer, Hamilton Pool Road, opposed Planet K locating in Bee Cave.

Chris Lauzy, 11602 Uplands Ridge Drive, stated that he was not against a Planet K business but not in Bee Cave.

Jeff Howell, Uplands, encouraged the Council to take whatever steps necessary to prevent a Planet K type of business from locating in Bee Cave.

Pam Gosch, 4508 Bat Falcon, opposed the location of an adult novelty type business in the commercial district as well as Town Center.

Craig Barnes, 12318 Carlsbad Drive, stated that this is not the kind of business that they want in the neighborhood.

Sonja McCathrone, 11808 Upland Ridge Drive, opposed Planet K in the neighborhood.

David Jessich, 3600 Avendale Drive, opposed Planet K in Bee Cave and stated he would pay higher taxes to pay for lawyers to keep the business out.

Kirkland Valley, 120 Carefree Circle, opposed Planet K locating anywhere in Bee Cave.

Brad Blaine, 4520 Mont Blanc Drive, stated that Bee Cave is the wrong area for Planet K. He asked if this ordinance was restrictive enough to keep other businesses of this type out.

Terry Lofgren, 200 Champion Drive, stated that she was concerned about the proximity of this business to children's play areas.

The following people submitted comment cards for the official record and all were opposed to Planet K locating in Bee Cave:

Darcy Peden, 14508 Broadwinged Hawk Drive

Karen Storm, 3905 Vail Drive

Tasha Yacktmann, 119 Sebastions Run

Nicole Yacktmann, 4712 Snake Eagle Circle

Natalie Cotton, 106 Snipe Court

Madison Harward, 15605 Pontic Pass

Megan Cotton, 106 Snipe Court

Jeff Henley, 4324 Vail Divide

The public hearing closed at 7:16 p.m.

Ms. Wood reported again on the action of the Commission. The Commission voted unanimously to recommend adoption of the proposed ordinances.

Phil Burden, 4305 Myrtle Beach Drive, asked the Council if these ordinances were the most restrictive the City could adopt.

Mayor Murphy commented on the Comprehensive Plan and the zoning adopted by the City Council.

Joe Lamendola, 3916 Gyrfalcon Circle, asked questions about applying for a conditional use permit.

Michelle Grumbles, Hamilton Pool Road, stated that the City was very restrictive on the sign for her firecracker stand so the city should not allow a sign like Planet K that has nudity.

City Attorney Patty Akers addressed the proposed ordinances and recommended clarifications.

MOTION: A motion was made by Council Member Dorsett, seconded by Mayor Pro Tem McCool, to approve Ordinance No. 83 with the addition of the word “and” between d and e in Section Three.

Adrian Overstreet, Asset Manager for the Hill Country Galleria, expressed concern over the language of Section Three.

AMENDMENT TO MAIN MOTION: A motion was made by Mayor Pro Tem McCool, seconded by Council Member Goodwin, to amend the main motion by deleting “any one or more” in paragraph 2 of Section Three and adding to Subsection e “not intended to include items regulated by the TABC.

No vote was taken on the motions at this time.

Executive Session

The City Council closed the Open Session at 8:09 p.m. to convene in Executive Session in the Conference Room.

At this point in the meeting, the Mayor Murphy publicly announced that a closed, executive session would be held and identified the sections of the Open Meeting Law under which the meeting would be held.

Executive session in accordance with the Texas Government Code, Section 551.071 – Consultation with Attorney in which the Attorney has a duty to the City under the Texas Disciplinary Rules of Professional Conduct that clearly conflicts with the provisions of the Open Meetings Law.

The City Council closed the Executive Session at 8:49 p.m. and reconvened in Regular Session in the Council Chambers.

The City Council continued their discussion of the following item:

Ordinance No. 83, an ordinance amending Chapter 32 (Zoning), Section 32.04.001 “Use Regulations” to provide for a new use of “Adult Novelty Stores” and amending Section 32.05.014 “Definitions” to define “Adult Novelty Stores and other Similar Businesses”.

AMENDMENT TO MAIN MOTION: A motion was made by Council Member Goodwin, seconded by Council Member Murphy, to amend the main motion to retain the redlined version of the ordinance as drafted, to delete Subsection e under Section Three and to add under Subsection c the sentence “Such “other smoking paraphernalia” shall not include cigarettes, cigars, rolling papers, tobacco or chewing tobacco.

Mayor Pro Tem McCool accepted the friendly amendment to the amended motion.

The vote was taken on the amendment to the main motion with the following result:

Voting Aye: Mayor Pro Tem McCool, Council Members Dorsett, Goodwin and
Murphy
Voting Nay: None
Absent: Council Member Bockius

The motion carried 4-0.

The vote was taken on the main motion as amended with the following result:

Voting Aye: Mayor Pro Tem McCool, Council Members Dorsett, Goodwin and
Murphy
Voting Nay: None
Absent: Council Member Bockius

The motion carried 4-0.

Ordinance No. 84, an ordinance amending Chapter 32 (Zoning), Section 32.03.012 “C-Commercial District” to include adult novelty stores as a possible conditional or permitted use, include a screening requirement, and adjust setback requirements.

MOTION: A motion was made by Council Member Murphy, seconded by Mayor Pro Tem McCool, to approve Ordinance No. 84 as presented.

The vote was taken on the motion with the following result:

Voting Aye: Mayor Pro Tem McCool, Council Members Dorsett, Goodwin and
Murphy
Voting Nay: None
Absent: Council Member Bockius

The motion carried 4-0.

Ordinance No. 85, an ordinance amending Chapter 32 (Zoning), Section 32.04.004 “Sexually Oriented Business” to provide for additional definition of “Major Business” and “Primary Business Purpose”.

MOTION: A motion was made by Council Member Dorsett, seconded by Council Member Murphy, to approve Ordinance No. 85 as presented.

The vote was taken on the motion with the following result:

Voting Aye: Mayor Pro Tem McCool, Council Members Dorsett, Goodwin and
Murphy
Voting Nay: None
Absent: Council Member Bockius

The motion carried 4-0.

Discuss and consider action on a sign variance for Just Four Paws.

Building Official Stephen Myrick presented this item.

MOTION: A motion was made by Council Member Murphy, seconded by Council Member Goodwin, to approve the sign variance for Just Four Paws as submitted.

The vote was taken on the motion with the following result:

Voting Aye: Mayor Pro Tem McCool, Council Members Dorsett, Goodwin and
Murphy
Voting Nay: None
Absent: Council Member Bockius

The motion carried 4-0.

Discuss and consider action to approve ranking of Architectural/Engineering firms and to authorize city staff to negotiate a contract with the highest ranked firm but if a contract cannot be negotiated, the city will continue negotiations with each subsequently ranked firm until a successful contract is negotiated.

Council Member Goodwin presented this item and discussed the rankings of the firms.

MOTION: A motion was made by Council Member Dorsett, seconded by Council Member Murphy, to approve the proposed ranking and to authorize staff to negotiate a contract with the highest ranked firm (Downing Ferguson Peebles) but if a contract cannot be negotiated, the city will continue negotiations with each subsequently ranked firm until a successful contract is negotiated.

The vote was taken on the motion with the following result:

Voting Aye: Mayor Pro Tem McCool, Council Members Dorsett, Goodwin and
Murphy
Voting Nay: None
Absent: Council Member Bockius

The motion carried 4-0.

Discuss and consider action to seek request for proposals for auditing firms.

MOTION: A motion was made by Council Member Murphy, seconded by Mayor Pro Tem McCool, to authorize staff to seek request for proposals for auditing firms for fiscal year 2010-2011.

The vote was taken on the motion with the following result:

Voting Aye: Mayor Pro Tem McCool, Council Members Dorsett, Goodwin and
Murphy
Voting Nay: None
Absent: Council Member Bockius

The motion carried 4-0.

Discuss and consider action on adopting a policy for designation of fund balance in accordance with the Government Standards Accounting Board (GASB).

MOTION: A motion was made by Council Member Murphy, seconded by Council Member Goodwin, to adopt the formal policy for designation of fund balance as presented to insure compliance with the GASB 54 for fiscal year 2010-2011.

The vote was taken on the motion with the following result:

Voting Aye: Mayor Pro Tem McCool, Council Members Dorsett, Goodwin and
Murphy
Voting Nay: None
Absent: Council Member Bockius

The motion carried 4-0.

Discuss and consider action to provide \$15,000 to the Coalition of Central Texas Utilities Development Corporation.

MOTION: A motion was made by Council Member Murphy, seconded by Mayor Pro Tem McCool, to authorize the city to allocate \$15,000 to the Coalition of Central Texas Utilities Development Corporation.

The vote was taken on the motion with the following result:

Voting Aye: Mayor Pro Tem McCool, Council Members Dorsett, Goodwin and
Murphy
Voting Nay: None
Absent: Council Member Bockius

The motion carried 4-0.

Executive Session

The City Council closed the Open Session at 9:22 p.m. to convene in Executive Session in the Conference Room.

At this point in the meeting, the Mayor Murphy publicly announced that a closed, executive session would be held and identified the sections of the Open Meeting Law under which the meeting would be held.

Executive session in accordance with the Texas Government Code, Section 551-072 – Deliberation regarding Real Property; and Section 551.071 – Consultation with Attorney in which the Attorney has a duty to the City under the Texas Disciplinary Rules of Professional Conduct that clearly conflicts with the provisions of the Open Meetings Law.

- A. LCRA Rate Case litigation
- B. Consultation with attorney regarding litigation filed against City and Reit Management & Research Trust by Rod-Ave, L.P.
- C. Consultation with attorney regarding litigation relating to the TCEQ's Executive Director's petition that recommends that land within the jurisdiction of the City be included in a ground water district within the Hill Country Priority Groundwater Management Area.
- D. Consultation with City Attorney regarding acquisition of LCRA water/wastewater systems.
- E. Consultation with City Attorney regarding authority of city to enforce building, sign and development ordinances and possible litigation with business desiring to open adult novelty store.

The City Council closed the Executive Session at 9:51 p.m. and reconvened in Regular Session in the Council Chambers.

Adjournment

MOTION: A motion was made by Mayor Pro Tem McCool, seconded by Council Member Goodwin, to adjourn.

The vote was taken on the motion with the following result:

Voting Aye: Mayor Pro Tem McCool, Council Members Dorsett, Goodwin and
Murphy
Voting Nay: None
Absent: Council Member Bockius

The motion carried 4-0.

The City Council adjourned the Regular Session at 9:51 p.m.

PASSED AND APPROVED this 10th day of May, 2011.

Caroline Murphy, Mayor

ATTEST:

Kaylynn Holloway, City Secretary
[SEAL]